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Commissioner

# Hazardous Waste Update

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## COST RECOVERY ACTIONS

Negotiations with individuals responsible for contaminating property are a major aspect of DEQE's remedial actions at hazardous waste sites and spills. Once informed of their liability, responsible parties are required to hire a contractor and, under DEQE supervision, to plan and carry out appropriate remedial actions.

If the responsible party does not respond in a timely fashion, DEQE will undertake the cleanup efforts and attempt to recover costs through administrative and civil enforcement actions, which can include liens on property owned by responsible individuals. If DEQE spends funds, each responsible party is strictly liable for up to three times the state's costs. Treble damages are intended to encourage those responsible for a hazardous situation to take responsibility at the outset rather than waiting for the Commonwealth to clean up and then pay.

Site owners or operators and generators who shipped waste to a site may be called upon to reimburse state and federal agencies for all cleanup expenses. DEQE (through the Attorney General's Office) and EPA negotiate with site owners and operators as well as with committees of generators to implement remedial actions and/or to recover government expenditures. In the case of the Silresim site in Lowell, the Commonwealth first sued the site owner, and recovered \$85,000 (including \$50,000 in life insurance), with an additional \$250,000 recovered from the mortgaging bank. The recovered funds totalled \$335,000—far short of the more than \$3 million spent by DEQE at this site.

Therefore, the Attorney General and EPA filed suit against the 300-plus generators who sent wastes to Silresim. The first phase of negotiations conducted jointly by DEQE and EPA have resulted in an agreement that generators will pay the state over \$1.9 million for past expenses. Enforcement actions are continuing against the generators who did not participate in that settlement. A second phase of negotiations is now addressing EPA's past expenses and additional remedial actions that will be required for final closure of the site.

Another committee of 300 generators who sent waste to the Resolve, Inc. site in Dartmouth started negotiating with EPA and DEQE in June 1983 to implement remedial measures at this site. By March 1984, the committee, EPA and DEQE had not reached an agreement. On April 11, 1984, EPA and the U.S. Army Corps of Engineers signed a contract to start remedial action at this site under the federal Superfund program, and will bill the generators for this work when it is complete.

The state attempts to recover costs for work at all spills and sites. During 1983, the state recovered \$81,000 from 18 separate small businesses and individual parties. Under the lien provisions of Chapter 7 of the Acts of 1983, assets of the Lewis Chemical Company in Hyde Park and Cannons Engineering Corporation in Bridgewater have recently been attached to defray response costs at those locations.

As a result of DEQE's efforts and the new enforcement powers provided by G.L. c.21E, the number of individuals willing to undertake necessary remedial actions at spills and contaminated sites is rising. More state money can be used to assess and clean up other sites where a responsible party cannot be identified or refuses to participate. When public funds are used for remedial work, the state will continue to pursue civil and criminal actions against responsible parties.

## ENFORCEMENT OF HAZARDOUS WASTE LAWS

**Convictions in the "Samek Case":** A North Brookfield man and his son were found guilty on October 26, 1983 of 55 violations of the Hazardous Waste Management Act. Raymond Samek was sentenced to serve four to five years in the Massachusetts Correctional Institution at Walpole. His son, Raymond P. Samek, was sentenced to five years in the Concord Reformatory. Indictments returned in January 1983 against the pair were the result of an intensive investigation initiated after individuals close to the defendants reported hazardous waste disposal activities. DEQE uncovered and removed more than 150 barrels from two separate locations in Warren, Massachusetts, and has started an investigation to determine what further remedial actions may be necessary at the site. Both Sameks are currently serving their prison sentences.

### HELLO AGAIN!

This is the first *Update* issue to be mailed out in close to a year. We hope to publish every two months—in shorter and more frequent editions. We're glad to be back!

**Consent Order Signed:** DEQE and Suffolk Services, Inc. of Dorchester signed a consent order on September 28, 1983. This licensed hazardous waste storage facility agreed, among other things, to accept only properly labelled hazardous waste and to comply with the facility standards for containers. DEQE also required the company to post a letter of credit or bond for \$65,000 to insure that funds exist to close the facility properly.

**Hazardous Waste Facility License Revoked:** In August 1982, DEQE revoked Lewis Chemical Company's hazardous waste treatment and storage license (issued under G.L. c.21C) after a series of inspections revealed serious violations in the facility's physical plant and management practices. Lewis Chemical Company appealed DEQE's revocation which enabled the firm to continue operating until its appeal was settled. On June 8, 1983, the hearing officer decided that Lewis' license should be revoked. In the meantime, two fires (one in April and one in May 1983) in the process area of the Hyde Park facility, coupled with the lack of an operating fire suppression system, prompted DEQE to shut the facility down on May 17 as an imminent threat to public health, safety and the environment. The closure was one of the first major actions under the state Superfund Law, General Law Chapter 21E. Lewis Chemical first obtained a license to treat and store hazardous waste in 1977 under the less stringent requirements in effect at that time.

## HAZARDOUS WASTE SITES: STATUS REPORT

Chapter 21E (the "State Superfund") provided new legal tools to encourage responsible individuals to pay for cleanup, greatly expanded DEQE's capacity to respond effectively to hazardous waste sites, and created a \$25 million bond fund for the state's use when enforcement fails and public funds must be used for the cleanup. DHW's Site Assessment Branch confirms hazardous waste problems at sites and oversees assessments and remedial actions. This office reports that remedial actions have been completed at 51 sites. Sixty-nine confirmed hazardous waste sites require additional studies and remedial action. Sixteen of these have been placed on the National Priority List for action under the federal Superfund (CERCLA) program. In addition, more than 260 potential sites are being investigated by DEQE. Recent activities at confirmed hazardous waste sites have included:

**Lanesboro, F.T. Rose property:** PCBs, oils and solvents were disposed on this site and were burned, affecting soil and groundwater. A hydrogeological study of the site was completed in February 1984. A water line replaced one contaminated well and is being extended to others. DEQE is negotiating with the responsible party to provide additional remedial action at this site.

**Lowell, Gorham Street:** Oil and organic chemicals were spilled from tanks and drums at the site of a chemical storage and packaging facility, polluting surface water and groundwater. Monitoring wells were installed in early 1983 to determine the extent of contamination. DEQE ordered the responsible parties to undertake remedial action. The order was appealed and is now in adjudicatory hearing.

**Norwood, Birmingham Reardon/Grant Gear:** Waste oils containing PCBs were disposed on land at the site of a manufacturing operation, affecting surface water and potentially affecting groundwater and air. 519 tons of contaminated soils were removed by EPA in June 1983. DEQE is now investigating options for long-term remedial action at the site.

**Worcester, Eastern Chemical Specialties:** Containers of organic compounds stored above and below ground were abandoned by a bankrupt commercial handler. Soils were contaminated by spillage and leaking containers; groundwater may be affected. In February 1984, DEQE's contractor, Chemical Waste Management of Mass., Inc., completed removal of over 65,000 gallons of hazardous waste and 480 tons of contaminated soils. A preliminary groundwater assessment is underway. DEQE has reached agreement with the property owners who have spent approximately \$29,000 to remove and legally dispose of all drums and their contents outside the buildings on this site. Enforcement and cost recovery actions against other responsible parties are on-going.

## ASSURING FINANCIAL RESPONSIBILITY FOR FACILITIES

Financial responsibility requirements (in 310 CMR 30.900) specify that adequate funds be available to properly close a facility and provide any necessary post-closure care, and set minimum insurance limits to cover third party damages in the event of a hazardous waste accident.

Documentation that these requirements have been met was due at DEQE on February 13, 1984. If a firm does not meet these requirements, it can no longer operate as a facility, and must apply to DEQE to change its status to that of generator. Generators are not permitted to accumulate hazardous waste for more than 90 days without obtaining a license.



More than 200 hazardous waste management facilities received Notices of Violation (NOVs) from DEQE in the first week of March for failing to either meet financial responsibility requirements or request a change of status from facility to generator. DEQE will initiate further enforcement action against firms failing to respond to the NOV.

## PHASE II AUTHORIZATION AND NEW HAZARDOUS WASTE REGULATIONS

DEQE is applying to EPA for final authorization to administer the state's hazardous waste regulatory program in lieu of the federal program. Massachusetts currently has interim authorization for Phase I (governing management standards) and is seeking interim authorization for Phase II (governing technical standards) concurrently with final authorization. Until authorization of the state program is granted, generators, transporters and facilities in the Commonwealth are subject to applicable federal and state regulations; while these are quite similar, the requirements are not identical.

In December 1983, EPA determined that several elements of the state regulations were not substantially equivalent to the corresponding federal regulation. DEQE was required to amend its regulations to qualify for interim authorization for Phase II. To meet EPA's deadline, on March 15, 1984, the necessary amendments were promulgated as emergency regulations. One amendment governs the reuse and recycling of federally listed wastes and sludges; others pertain to listing of chromium-bearing wastes, the use of surety bonds for financial responsibility, and groundwater monitoring requirements.

Further amendments to the state's hazardous waste regulations, necessary before EPA can grant *final* authorization to the state to operate its hazardous waste program in lieu of the federal program, are also being proposed. In addition, regulatory amendments unrelated to authorization are being proposed, e.g., standards for incinerators. Public hearings in May (see *Announcements*) seek comment on the entire set of proposed regulations as well as on DEQE's proposed application for final authorization.

## STATEWIDE EMERGENCY RESPONSE CAPABILITY

On March 1, a consortium of firms headed by Clean Harbors, Inc., of Kingston became Massachusetts' new statewide emergency response contractor. The Clean Harbors consortium expanded the laboratory, hydrogeological and cost accounting services available to DEQE for containment and removal of spills of oils and hazardous materials which constitute a threat to the public health, safety, welfare or the environment. The new contract allows DEQE to: clean up or remove hazardous materials which have been or might be released into the environment, secure for the Commonwealth the benefits of pertinent federal laws, and provide the necessary technical and support data to ensure that enforcement and cost recovery actions against responsible parties are successful. In evaluating proposals, DEQE considered both performance and cost criteria, with performance criteria weighted almost twice as heavily in the competitive scoring system.

As an emergency is reported, DEQE immediately assesses its impact and identifies the responsible party. When the responsible party refuses to take appropriate action or is unknown, and when the emergency threatens public health, safety, welfare or the environment, DEQE calls in the contractor, who can arrive anywhere in the Commonwealth within two hours (except for Nantucket, Martha's Vineyard and the Elizabeth Islands, where the response time is three hours). DEQE personnel supervises the contractor or the responsible party in testing, containing and removing hazardous materials, and in maintaining site security.

## NEW LAWS AND REGULATIONS

Copies of all Massachusetts laws and regulations are available from the State House Bookstore, Room 116, State House, Boston, MA 02133. Prices (including mailing costs) are available from the Bookstore, (617) 727-2834.

**Chapter 7 of the Acts of 1983.** The "State Superfund" added a new Chapter 21E to the General Laws, "The Massachusetts Oil and Hazardous Materials Release Prevention and Response Act of 1983" (signed into law March 24, 1983). Free.

**Massachusetts Hazardous Waste Regulations.** Phase II and amendments to Phase I of these regulations became effective October 15, 1983. Request the consolidated version of 310 CMR 30.000. \$6.00 if picked up.

**Emergency Hazardous Waste Regulations** amending 310 CMR 30.000. Promulgated March 15, 1984, and published in the Massachusetts Register on March 22. \$1.25.

**Land Application of Sludge and Septage,** 310 CMR 32.00. Promulgated November 15, 1983. \$1.25.

## ANNOUNCEMENTS

### Public Hearings on Proposed Hazardous Waste and Final Authorization Application (See related story on Authorization)

- May 14, Worcester UMass Medical Center, Amphitheater 3, 7:30 pm
- May 15, Boston DEQE Office, One Winter Street, 10th Floor, 10:00 am.
- May 17, Holyoke Community College, Forum Building, Room C-311, 7:30 pm.
- May 21, Haverhill, Northern Essex Community College Library, 7:00 pm.
- May 22, Fall River City Hall, Council Hearing Room, 7:30 pm.
- May 24, Pittsfield City Hall, City Council Chambers, 7:00 pm.

Copies of the emergency regulations, new proposed regulations and the application for final authorization are available for inspection at each Regional Planning Agency and each DEQE regional office. Copies may be obtained, free of charge, at the DEQE Boston office, One Winter Street.

Testimony may be presented orally and/or in writing at the public hearings. Testimony on the emergency regulations must be submitted in writing by May 24, 1984. Testimony on all other proposed regulatory amendments and additions as well as the proposed authorization application may be submitted in writing by June 7, 1984. Questions and written comments should be forwarded to: Larry Giarrizzo, Director, Regulatory Task Force, Division of Hazardous Waste, One Winter St., 5th Floor, Boston, MA 02108. (617) 292-5582.

**DEQE is soliciting proposals for a statewide Field Investigation Team (FIT)** to assist the Commonwealth in conducting and managing its site assessment and remedial action program. Further information may be obtained by calling Richard Bates in DHW's Office of Incident Response at 292-5507.

**ALSO AVAILABLE FROM DHW:** *Household Hazardous Waste Collection Days* Policy providing guidance for communities wishing to hold collection days; *List of 137 Licensed Hazardous Waste Transporters; Confirmed Hazardous Waste Site List*, March, 1984; *A Review of DHW's Recent Activities and Accomplishments*, April, 1984; *List of DHW Policies*; and *List of Information Available from DHW*. Call 292-5584 or 292-5578.

**Water Supply Protection Atlas.** Provides valuable information about water sources, waste sites, aquifers, and river basin divides in Massachusetts. Each city and town in the Commonwealth has been provided with a copy. Contact your chief elected official or DEQE Division of Water Supply at (617) 292-5527.

## NOTES TO REGULATED FIRMS

**Underground tanks** containing hazardous waste were to have been tested for leakage by April 16, 1984, unless the tank stores waste oil or it meets secondary containment provisions. DEQE inspectors will look for certification that underground tanks are not leaking at their next visit to your plant. Tanks found to be leaking must be removed and replaced.

**Is your firm or plant moving?** Your EPA Identification Number is issued specifically for your location. If you are moving, please notify DEQE and EPA well in advance so that a new identification number may be issued. Otherwise, you may be liable for future hazardous waste activities at your old address.

**Waste analysis plans** for wastewater treatment units were due at DEQE by April 16, 1984. This plan specifies how the facility will analyze its waste, the frequency of analysis, effluent discharge to a publicly owned treatment works and the type of treatment provided. DEQE's DHW and Division of Water Pollution Control are working together to compile and analyze this data.

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